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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-192609

DATE: 4/10/78

MATTER OF: Emory A. McKinley - Report of Survey

DIGEST: Report of Survey, reviewed on appeal by proper military authority, found Air Force supply employees jointly and severally liable for disappearance of two cases of sunglasses. Sunglasses had been delivered to base, but were misrouted and never properly processed or accounted for. Business Agent of labor union, representing one of the employees, requests GAO review the decision of the Air Force assessing liability. GAO has no authority to review determinations resulting from Report of Survey since such determinations are final under 10 U.S.C. § 9835.

This decision is in response to a request from Mr. Curtis C. DeWitt, Business Agent, Local 987, American Federation of Government Employees (AFL-CIO), for review of the decision of June 22, 1978, issued by the Commander, Air Force Accounting and Finance Center, Department of the Air Force, assessing pecuniary liability against Mr. Emory A. McKinley.

According to the file, an investigation by Materiel Receiving Branch personnel, Robins Air Force Base (AFB), Georgia, revealed that on August 26, 1977, Government property consisting of two cases containing a total of 298 pairs of sunglasses was shipped from the Defense Depot, Mechanicsburg, Pennsylvania, via Georgia Highway Express, to Robins AFB. On August 30, 1977, a warehouseman in the Decentralized Receiving Section received the two cases and signed a bill of lading therefor. The sunglasses were misrouted, never processed or posted to accountable records, and subsequently disappeared. An official investigation by the Base Security Division led to the issuance on November 1, 1977, of Report of Survey No. 78-52 which held Richard L. Dubose, Emory A. McKinley, and Gerald Burluson, all supply employees at Robins AFB, pecuniarily liable in the amount of \$1,940.84 for the missing property. The Report of Survey was approved by an authorized official on February 15, 1978.

On February 21, 1978, Mr. McKinley filed an appeal to the Report of Survey. Upon review of all the facts, circumstances

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and laws pertaining to the case, the Commander, Air Force Accounting and Finance Center, representing the Secretary of the Air Force, in part granted the appeal holding that Mr. McKinley was not liable for 100 pairs of sunglasses in the amount of \$802, but denied it to the extent of holding him jointly and severally liable along with Mr. Burleson for 134 pairs of sunglasses in the amount of \$1,074.68.

The actions of the Air Force in this case were taken pursuant to 10 U.S.C. §§ 9832 and 9835, set forth below:

"§ 9832. Property accountability: regulations

"The Secretary of the Air Force may prescribe regulations for the accounting for Air Force property and the fixing of responsibility for that property."

"§ 9835. Reports of survey

"(a) Under such regulations as the Secretary of the Air Force may prescribe, any officer of the Air Force designated by him may act upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of or damage to property of the United States under the control of the Department of the Air Force.

"(b) Action taken under subsection (a) is final; except that action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by the Secretary or an officer of the Air Force designated by him."

The Report of Survey, including the required legal review and written legal opinion, was conducted pursuant to Air Force regulations then in effect, specifically Air Force Regulation (AFR) 177-111, January 21, 1977 (since superseded by AFR 177-111, April 26, 1978). The determination of liability was not based on gross negligence, but on "deliberate unauthorized use," defined as "willful or intentional use without right, permit, or authority." Id., para. 1-5j. If a finding is based on deliberate unauthorized use, proof of negligence is not required. Id., para. 1-4a(2). According to

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documents in the file, the basis for the finding of deliberate unauthorized use was that Mr. McKinley, by virtue of his position, knew or should have known that proper distribution procedures were not being used.

Under 10 U.S.C. § 9835(b), the determination of the Air Force is "final." It has been held that this language does not bar judicial review, at least where the administrative findings are supported by no evidence or no substantial evidence. Abel v. United States, 423 F.2d 339 (Ct. Cl. 1970). However, we do not believe the finality language of section 9835(b) permits us to look behind the administrative findings, and therefore must conclude that the determination of the Air Force is not subject to review by our Office. B-154960, August 27, 1964.

Accordingly, we have no alternative but to accept the final administrative determination of the Department of the Air Force.

~~R. F. WILLIAMS~~

Comptroller General
of the United States